

WATER ALLOCATION PROGRAM DEVELOPMENT WORKSHOP

MEETING PROCEEDINGS

Thursday, July 25, 2002

Board Members Present:

Daniel Varin
Robert Griffith
Steven Donohue
Jon Schock
Jan Reitsma

Staff Present:

Paul Sams
Kathleen Crawley
Connie McGreavy

Guests Present:

Judy Doerner
Harold Ward
Ann Veeger
Mike Rubin
John O'Brien
Meg Kerr
Ralph Abele
Megan Terebus
Jeff Willis
Katherine Fisher

Al Mancini
Karen Fisher
Vicky Drew
Elizabeth Scott
Eugenia Marks
Andrea Balazs
David Turin
James Campbell
Ralph Abele

1. CALL TO ORDER

Mr. Varin, Chairman of the RI Water Resources Board, called the meeting to order at 9:10AM. He stated that this was one of a series of meetings that the RI Water Resources Board's (Board) Public Drinking Water Protection Committee organized to help Board members and others who are interested in understanding water allocation to explore means for resolving these issues. He stated that the objective throughout this process is to work cooperatively with all interested parties. Mr. Sams stated that this process involves different agencies, organizations and overlapping responsibilities. Issues will arise with no pre-determined answers. The answers that are used may not be based on the best information available. Even with data available, educated assumptions may have to be made in order to move forward, involving a cooperative process.

Bob Griffith, Chair of the Public Drinking Water Protection Committee, stated that the ongoing drought situation prompted the discussion. The Board has embarked on a process of the phase registration program that will evolve into a water allocation program. Before this can be done, specific issues must be addressed including: stream flow, water rights, emergency priorities, and equity issues. He stated that the Board does not have resources to duplicate efforts or take on these issues exclusively. The Board thinks that it is essential to involve communities that also have pieces of the puzzle to build an interdisciplinary and inclusive, water allocation program. He stated that the goal is to reach out to all stakeholders and to best use existing resources.

2. WATER ALLOCATION PROGRAM OVERVIEW

Ms. Crawley gave an overview of the program to date. She described the major program components adding that issues of overlapping jurisdiction became apparent when working within the regulatory framework during the drought planning process. Ms. Crawley described the Board's \$5.5 million investment in a comprehensive inventory of the water supply, how it is used, where it goes, and how much is available for future use. She also discussed water modeling efforts, data collection, and information systems.

3. WATER ALLOCATION PROGRAM COMPONENTS

Ms. McGreavy explained that selection of the major program components was based on those found in the laws of other states. She indicated that in Rhode Island, there are many questions than answers. Ms. McGreavy cited Connecticut as an example of a state that has gone through a

difficult process of implementing a program that in some ways had not been working. She urged that Rhode Islanders pay attention to lessons learned elsewhere in order to develop a thoughtful program and use time and resources effectively.

A. Major Research/Impact Analysis

Ms. McGreavy opened by saying that any water allocation decision made, large or small, would have an impact—hydrologic, economic, social, and political. Therefore, major research and analyses were necessary to determine, among other things, the costs [and benefits], consequences, including unintended consequences, and what water allocation may mean to different sectors of the economy. Initially, research would be done regarding water withdrawal registration systems. However, each major program component has its own research element. Mr. Reitsma added, “It is as much allocation, as a lack of allocation”. Ms. McGreavy cautioned that some water allocation decisions would be unpopular and result in backlash.

B. Water Withdrawal Registration System

Ms. McGreavy pointed out some of the facets of a registration system, such as whether it should be voluntary or mandatory. She questioned whether a voluntary reporting program would work. She said that it would be important to establish water withdrawal thresholds for registration and noted that Rhode Island’s major users consume 3 million gallons per day. One consideration would be whether to start with a small group. Alternately, if 90% of the water used in Rhode Island is public water supply, then perhaps the focus should be placed there. She asked, “What about private well users?” Other administrative concerns include data collection and processing—where is the money to populate databases and to monitor continually? Could the data be collected online, or by making use of billing records provided by water suppliers? What increment is needed for effective measuring; can it be done? Should incentives be given to encourage reporting?

C. Stream Flow Standards

Ms. McGreavy stated that the RI Dept. of Environmental Management (DEM) is on track regarding adopting an “interim” stream flow standard. She explained that the focus of the group would be to develop a long-term standard for the entire state. She referred to New Hampshire, which legislated a standard, one stream at a time. Ms. McGreavy acknowledged DEM and the USEPA for their work on a Power Point presentation that would be shared with the group.

D. Priority Uses During Emergencies

Ms. McGreavy asked rhetorically, “Who decides what priority uses of water are during an emergency?” She referred to the recent bioterrorism training exercise as an example when both the RI Dept. of Health (DOH) and the RI Emergency Management claimed over-riding authority. After considerations for health and public safety, what criteria would be used to decide what water uses are nonessential? For example, although a car wash recycles its water (uses water effectively), it would not be considered a priority use in all cases. Ms. McGreavy reminded people that water suppliers loathe to implement water use reductions, but do have on paper, a tiered reduction strategy.

E. Water Rights/Regulatory Authority

Ms. McGreavy made note of the multiple authorities and jurisdictions involved. She said that, in many instances, the mission statements of all stakeholders apply to water resources management considerations that would affect a water allocation program. She indicated that it would be critical to work together towards one common objective. Logically, attorneys would be needed to untangle the lines of authority and project new ones—including areas where new regulations would be needed.

F. Out-of-Basin Transfer

To help explain the concept, Ms. McGreavy gave an example of pumping groundwater out of one watershed and selling, or transported it, to another watershed where it might be used or discharged. Out-of-basin transfers have a hydrological effect somewhere else in the water system. Can this be regulated? In a sense, water suppliers are already doing this when they “wheel water” between water districts. Ms. McGreavy posed a few scenarios, such as whether in an emergency, could a governor impose an executive order that curtails the movement of water, to or from, the state? What other effects does out-of-basin transfer have on the natural environment, the economy and the cost of water?

G. Fees/Water Rates/Alternatives

Ms. McGreavy stated that there is a fundamental conflict between conservation rates and emergency rates. If one is conserving and using less water, then theoretically, one would expect to pay less. However, if less water is used because there is an emergency, then water suppliers need to increase revenues to keep the plant operational. This is a situation where in an emergency, water suppliers could charge *more* money, even if less water was used, to cover costs. Ms. McGreavy pointed out that the RI Division of Public Utilities and Carriers (PUC) has the ability to set rates during emergencies. Ms. McGreavy questioned whether rates should be on a seasonal basis, or figured to promote conservation year-round. Could water be recycled or traded? Can the concept of mitigation banking for wetlands and air be applied to water? Does it work? Ms. McGreavy stated that this is also a good opportunity to integrate water and wastewater planning, and that a menu of criteria is necessary

H. Compliance/Conflict Resolution

Ms. McGreavy stated that compliance problems are anticipated because often programs are put in place, but then not overseen or enforced. When water becomes unavailable, it will be important to have a mechanism in place to resolve conflict. She stated that water rights in Rhode Island were last tested in the late 1800s and that legal expertise is needed to look at these difficult issues. (The law currently provides for the Water Resources Board to mediate disputes.)

I. Education/Outreach/Technical Assistance

Ms. McGreavy commented that there would be a tremendous learning curve in understanding water allocation—on the part of water suppliers, major water users, scientists, administrators and the public. Education, outreach and technical assistance will be necessary to understand how to reuse or recycle water to make processes work better. Ms. McGreavy cited the city of Phoenix, Arizona which is very advanced in terms of programs for specific sectors. Data needs to be formed into knowledge at the earliest possible time in order to make prudent decisions.

J. Reporting/Program Evaluation/Sustained Funding/Joint Advocacy

Ms. McGreavy stated that reporting and program evaluation are basic tenets of public administration. She emphasized that the only way to sustain a water allocation program would be to join together, budget and advocate together. She touched on the role of the Rhode Island Watershed Approach Coordinating Council as a vehicle to promote unifying around a common program objective.

K. Other

Ms. McGreavy asked if anyone had any other suggestions for major program components, acknowledging that no one agency could undertake the entire task. She reiterated that some agencies are already charged with certain facets of water resources management related to water allocation, but now, it makes more sense to develop one, integrated program.

A comment period followed. Mr. Reitsma wished to add a bullet for economics to the Research component. Regarding smart growth, he felt it was fundamental to reevaluate tax policies in Rhode Island. He A fundamental analysis is also necessary of how water supply entities can be in business. He also stated that it was important not to develop an adverse relationship with water suppliers. Mr. Reitsma also suggested that watershed analysis is necessary to identify stressed basins, which would help to prioritize the decision-making process. Regarding the Water Withdrawal Registration component, Mr. Reitsma suggested that it should not be either a voluntary or mandatory system, but instead a blend. People should not approach the situation as having to choose between the two, because people will be compelled to go with voluntary and oppose mandatory. Instead, there needs to be an ability to combine them. Regarding thresholds, Mr. Reitsma suggested that it is necessary to be careful in how this is presented. It is one thing to set a threshold for the purpose of *registration* compared to setting a threshold for purposes of *regulation*. People mix these concepts up and sometimes oppose things they don't mean to.

Under both Stream Flow Standards and Out-of-Basin Transfer, Mr. Reitsma proposed assessing current conditions, instead of just a theoretical analysis about standards or approaches. Doing so would help to identify where there are already problems. He stated that under Stream Flow Standards, a long-term approach raises the issue of variability. It is unrealistic to expect that there is a straightforward standard because stream flow varies by season and by year. He then questioned how this is currently being dealt with. He said that this was an opportunity to fine-tune—to determine which restrictions are necessary, and how severe those restrictions should be. On the other hand, it could create a predictability problem in some cases. Mr. Reitsma clarified that DEM was proposing a “presumptive” rather than absolute standard, even if it was imperfect. This means that a plan of action would be based on the best information available, even if was incomplete. A presumptive standard would eliminate the need to undertake massive analyses in every case. If the standard did not make sense, then there would be other ways to address compliance. For example, applicants could work independently or with the state. Under “Other”, Mr. Reitsma suggested that there be a focus on interagency coordination. An executive order at the proper time could be proposed for both inter and intra-state agencies.

Ms. Scott commented that the full water budget (full water cycle) must also be looked at. It is necessary to consider incentives to get water back into the system—to “recharge” it. She mentioned that the focus of DEM’s water quality protection efforts include infiltration of storm water as a way to control pollution loading. By recharging the groundwater supply, storm water infiltration can help maintain a higher base flow condition in rivers when there is no rain. Ms. McGreavy acknowledged Ms. Scott’s suggestion, noting that integration of water and wastewater, as well as water quality/quantity considerations was under agenda item, Next Steps. Ms. Scott felt strongly that integrated water management could be incorporated into this phase. She stated that if giving priority to certain uses is being considered, then why not give priority to uses that can demonstrate water recharge, infiltration and putting water back into the system?

Ms. Scott next referred to the optimization studies that have begun in the Pawcatuck, Blackstone and Chipuxet watersheds as proactive water resource management. She said that it is important to be able to use different sources at different times of the year depending on stresses in one basin or another, and to incorporate this concept [in a water allocation program]. Ms. Veeger concurred that there is a huge amount of water being discharged. The technology exists to make that water useable for a significant segment of the commercial and industrial sectors.

Mr. Ward stated that registration needs to do more than measure how much water is being pumped out of a stream or the ground. He believes that registration needs to look at how water is being used, and whether the uses are reasonable. He wondered whether best management practices were being employed, considering the volume of water withdrawn. Ms. McGreavy

responded by saying that water suppliers try to report volume of water by category according to the Standard Industrial Classification (SIC) Code. She added that it might be too burdensome a condition for most water suppliers to comply with. Ms. McGreavy suggested that metering water consumption might help get a handle on what is reasonable use.

Mr. Abele echoed the sentiments of Ms. Scott regarding the need to consider the whole picture—water/wastewater and water quality/quantity. He added that it is important to get the message out early, to use a collective decision-making process, and assure that no single entity is singled out. Ms. McGreavy stated that the American Water Works Assn. “white paper” looks at what factors, besides withdrawals, are causing an effect on stream flow. The paper raises the issues of out-of-basin transfer and runoff, in addition to other ways that water escapes. She commented that information from water use and availability studies will help determine who is using the water, how much is being used, and thus, shine light on what an appropriate stream flow threshold(s) should be.

Ms. Marks suggested that there should be a pretreatment program for wastewater where suppliers would require consumers to specify water used. Ms. McGreavy added that water suppliers could potentially do this by using billing records. Mr. Schock commented that suppliers know the amount of water being used because most uses are metered, but that suppliers did not necessarily have authority to get more detail. The question for industry is whether water is being used efficiently. Ms. Marks responded that there is an assumption that they do use water efficiently. Mr. Ward commented that water is not likely being used efficiently because there is no incentive to do so. He said that cannot be assumed, given current water rates. Ms. McGreavy, again, cited Phoenix, Arizona’s superb conservation education program. She said that it is a matter of building awareness and perhaps working with the RI Economic Development Corp. to target certain sectors. Workshops could be arranged to demonstrate how things could be done.

Mr. Reitsma suggested that long-term planning should include a program that entails reaching out to business, analyzing processes, and showing the advantages of conserving water or using non-potable water. Mr. Reitsma favored a technical assistance program. Mr. Meyer commented that is not fair to single out industry because residential use is also very wasteful. Ms. McGreavy responded that this is a basic question surrounding how the majority of water is used in the state, and whether the impact is greater from cumulative residential use or by a particular sector. Mr. Ward commented that the Major Users Technical Assistance Program is only for large water suppliers. Small water suppliers with just a few major users do not have a way to build up expertise. He stated that the program should be centralized so that expertise is shared.

3. FIRST PHASE OF PROGRAM IMPLEMENTATION

A. Identify Program Participants

Ms. McGreavy said that if anyone thinks of any other stakeholder who should be a part of this process, then they should contact either herself or Ms. Crawley. Mr. Reitsma suggested that the business community be represented including the Chambers of Commerce. He also recommended that DEM’s Division of Agriculture be contacted for the legal analysis component as well as for consumer representation and PUC-type activities. Ms. McGreavy stated that both Mike Rubin from the RI Attorney General’s Office and Jennifer Steel of the Conservation Law Foundation were to the meeting

B. Identify a Watershed for Program Roll-out

In targeting a particular watershed to phase in a registration program, Ms. McGreavy named the Wood-Pawcatuck since there is available data, support in the community, and funding. The Blackstone is a second watershed. Mr. Donohue commented that we

should start with two different watersheds because each one has different water uses and different demands. Mr. Reitsma agreed and said that there is a possibility of getting the Blackstone River Watershed Council and the Blackstone River Valley Corridor Commission involved because they could possibly allocate resources.

C. Coordinate Activities for each Program Component/Participant

Ms. McGreavy stated that there are enough people involved in this process to take on one of the major components listed. She suggested that each sub-group present a report to the group on a monthly basis. Ms. Crawley thought it best to have research regarding successful registration programs presented in September.

Ms. McGreavy stated that there are specific agencies that would be best suited to address subjects. For instance, Ms. Veeger of URI is working on the Block Island and Jamestown water use studies and inputting data into the New England Water Use Database System. Her department, URI-Geosciences, will play a lead role in the Registration component. Ms. McGreavy described another data system under design to capture information from water supply system management plans. Mr. Reitsma suggested a presentation about what data is being collected and what kinds of databases are being built at the next meeting. Ms. McGreavy next mentioned DEM's permit streamlining project and DOH's initiative to upgrade their DOS-based, water quality database. Mr. Reitsma responded that he would like to hear from people who have worked on databases, both at the inter-state and intra-state level.

Ms. McGreavy next associated the RI Attorney General's Office with the Water Rights/Regulatory Authority component. She suggested that staff counsel to the RI Dept. of Administration (DOA), DEM, , PUC, and DOH could work with the Attorney General's Office. Ms. Marks asked if this included looking at old mill rights. Ms. Crawley stated that ideally, expertise in each of the issue areas would be addressed in small, work groups which would regularly come together as a whole for updates and presentations. Ms. McGreavy held up a 12-month timeline. URI's Coastal Resources Center offered to host a web page as part of the Education component. Regarding Out-of-Basin Transfers, Ms. McGreavy asked for volunteers suggesting that this is an appropriate component for a water supplier to lead. She also pegged DOA and DOH with establishing priority uses according to statute. Likewise, the PUC would be the obvious lead for the Water Rates component. Ms. McGreavy invited the Natural Resources Conservation Service to assist with the registration program because of their experience with farmers.

Mr. Sams reiterated that multiple groups should be involved. It would be a matter of looking at a particular category and assessing whom would best address the issue or who has a particular interest. Mr. Reitsma compared this exercise with the RI Watershed Approach Coordinating Council model. He suggested that participating organizations indicate a particular interest and specify the kinds of resources they could bring to the program. The timetable could be changed to make it more like a work plan instead of a list of ongoing studies and presentations. Regarding Stream Flow and Registration, Mr. Reitsma suggested that a registration program is the way to get necessary information. Additionally, a timeline is needed to establish milestones. He volunteered to work with the Board on the work plan.

Chairman Varin agreed with Mr. Reitsma and suggested that staff should be charged before the next meeting to come up with their own sense of which organizations could lead the major component areas. Mr. Griffith said that anyone else who wants to self-

select in, can, and that if an agency thinks they should or should not be a part of a specific work group, then it needs to explain to the group why. Mr. Griffith would like to see this process start in fiscal year 2003. Mr. Donohue stated that he favored moving rapidly on the registration program, but that he did not want to rush into setting stream flow standards. He was concerned that having “preemptive” standards would put him out of business. Further, he did not think that the group should tacitly agree to a standard that not everyone has input in. Mr. Donohue would like to see the group move forward more slowly and deliberately.

Mr. Reitsma countered that it is not a preemptive standard, but an interim standard. He explained that “presumptive” standard means that it works for both the applicant and the regulatory agency. It is important that before embarking on an exercise, operating principles are established. If a presumptive, interim stream flow standard is set (and if the group agrees that one objective is not to drive people out of business) then the group can work towards a [long-term] standard. If the group finds out that a standard does not seem right, then it would not be adopted. Mr. Donohue responded that the problem lies where the burden of proof is. If a standard is set for the water user, then he does not have a chance. Mr. Reitsma responded that it is typical for people to react to regulators assuming the worst-case scenario. Ms. McGreavy stated that these are just the types of interdisciplinary discussions that are envisioned for the committees because, clearly, opposing interests must be addressed under each one of the topics.

D. Interface with Regional Initiatives

Ms. McGreavy referred to the October conference in Connecticut and urged people to attend.

5. NEXT STEPS

Ms. McGreavy stated that each committee would be responsible for identifying outcomes and timelines for each program component. Board staff would provide organizing principles for committees. Major milestones to be decided by the group include rollout of a water withdrawal registration system, setting interim and long-term stream flow standards, and actual implementation of a registration program in the Pawcatuck and/or Blackstone watersheds. Mr. Reitsma clarified that he had suggested using the RI Watershed Approach Coordinating Council model, but not necessarily bringing these issues to them. Mr. O’Brien thought the model was good, but that the process did not necessarily need to be duplicated. Ms. McGreavy reminded the group that there would be legislative considerations, testing of data systems, and funding/resource issues still to be determined. Additionally, implementation would have to provide for the regulatory process, as appropriate.

6. CLOSING REMARKS

Mr. Griffith thanked everyone for participating summing the discussion up by saying, “We don’t want to drain the swamps and put people out of business”. Outcomes are important, and as often is the case, there will be competing interests in the process of allocating water. Mr. Griffith emphasized the need to stay focussed, to cooperate, eliminate redundant efforts and jointly advocate for the registration program. Mr. Varin concurred that the group needs to go forward together. Mr. Sams promised to provide a master list of organizations that could participate, and that in light of fiscal constraints, it was important to find new ways of doing business. He set the next meeting for Thursday, August 29, 2002 at 9AM at the RI Dept. of Administration.